No. 04-698

Supreme Court, U.S.
FILED
APR 29 2005
OFFICE OF THE CLERK

In The Supreme Court of the United States

BRIAN SCHAFFER, a minor by his parents and next friends, JOCELYN AND MARTIN SCHAFFER, *et al.*,

Petitioners,

v.

JERRY WEAST, Superintendent of Montgomery County Public Schools, *et al.*,

Respondents.

On Writ Of Certiorari To The Fourth Circuit Court Of Appeals

JOINT APPENDIX

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Petition For Certiorari Was Filed On November 19, 2004
Certiorari Was Granted On February 22, 2005

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Order of district court (Oct. 29, 2004) ..... App. 163

RELEVANT DOCKET ENTRIES

U.S. District Court
District of Maryland (Greenbelt)
CIVIL DOCKET FOR CASE #: 8:99-cv-00015-PJM
Date Filed: 01/05/1999

Date Filed	#	Docket Text
01/05/1999	1	COMPLAINT filed; FILING FEE $150 RECEIPT # 129324 (ajh, Deputy Clerk) (Entered: 01/06/1999)
		* * *
02/10/1999	3	ANSWER to Complaint by Paul Vance, Board of Education (Attorney Zvi Greismann, Edmund W. Law), with Acknowlegment [sic] of Summons and complaint(c/s) (rank, Deputy Clerk) (Entered: 02/16/1999)
		* * *
08/06/1999	8	MOTION with memorandum in support by Paul Vance, Board of Education for Summary Judgment (c/s) (td, Deputy Clerk) (Entered: 08/06/1999)
08/06/1999	9	MOTION with memorandum in support by Plaintiffs for Summary Judgment (c/s) (rank, Deputy Clerk) (Entered: 08/09/1999)
		* * *
10/27/1999	18	Transcript of proceedings held before the Office of Administrative Hearings and final decision of 7/9/98 (FILED SEPARATELY) (ajh, Deputy Clerk) (Entered: 11/01/1999)
		* * *

12/07/1999		Motion hearing held before Messitte, J. re: [8-1] motion for Summary Judgment – Argued – taken under advisement (ER: Peterson) (ajh, Deputy Clerk) (Entered: 12/08/1999)
		* * *
03/16/2000	23	MEMORANDUM OPINION (signed by Judge Peter J. Messitte) (c/i 3/20/00 (lad, Deputy Clerk) (Entered: 03/20/2000)
03/16/2000	24	ORDER rendering moot [8-1] motion of defendant for Summary Judgment; granting [9-1] motion of plaintiff for Summary Judgment; "REMANDING" this case to the Administrative Law Judge; and "DIRECTING" the Clerk to Close this Case (signed by Judge Peter J. Messitte) (c/i 3/20/00) (microfilmed 3/20/00) (lad, Deputy Clerk) (Entered: 03/20/2000)
		* * *
04/13/2000	25	NOTICE OF APPEAL by Board of Education, Paul Vance. Fee Status: $105.00 Filing Fee Paid Appeal record due on 5/13/00 (c/s) (mlb, Deputy Clerk) (Entered: 04/14/2000)
		* * *
02/05/2001	35	JUDGMENT OF USCA (certified copy) "VACATING" the judgment of the USDC and "REMANDING" to the USDC for further proceedings Re: [25-1] appeal by Paul Vance, Board of Education (mlb, Deputy Clerk) (Entered: 02/05/2001)

02/05/2001		Case reopened (rank, Deputy Clerk) (Entered: 02/08/2001)
		* * *
03/09/2001	36	COMPLAINT filed and Exhibits 1-3 (c/s) (ajh, Deputy Clerk) (Entered: 03/13/2001)
03/29/2001	37	ANSWER to Complaint by Brian Schaffer, Jocelyn Schaffer, Martin Schaffer (Attorney Michael J Eig, Haylie Michelle Iseman), (c/s) (rank, Deputy Clerk) (Entered: 04/02/2001)
		* * *
04/09/2001	40	ANSWER by plaintiffs/counter-defendants to counterclaim (c/s) (ajh, Deputy Clerk) (Entered: 04/09/2001)
04/20/2001	41	MOTION with memorandum in support by defendants Brian Schaffer, Martin Schaffer, Jocelyn Schaffer for Preliminary Injunction, Declaration and Exhibits 1-3 (c/s) (ajh, Deputy Clerk) (Entered: 04/23/2001)
05/04/2001	42	RESPONSE by plaintiffs in opposition to [41-1] motion for Preliminary Injunction by Jocelyn Schaffer, Martin Schaffer, Brian Schaffer and attachment (c/s) (ajh, Deputy Clerk) (Entered: 05/07/2001)
05/04/2001	43	Transcript of hearing held before the Maryland State Department of Education and Exhibits (FILED SEPARATELY) (ajh, Deputy Clerk) (Entered: 05/08/2001)
		* * *
05/14/2001	45	MOTION with memorandum in support by Brian Schaffer, Jocelyn S.

Schaffer, Martin P. Schaffer for Summary Judgment (c/s) (lad, Deputy Clerk) (Entered: 05/15/2001)

05/14/2001 46 Transcript of Pre Hearing Telephonic conference (4) held before the Administrate Law Judge on June 1, 2000; Aug. 3, 2000; Aug. 28, 2000; and Aug. 31, 2000 (FILED SEPARATELY) (rank, Deputy Clerk) (Entered: 05/16/2001)

* * *

05/18/2001 49 REPLY by Brian Schaffer, Jocelyn S. Schaffer, Martin P. Schaffer to response in opposition by plaintiffs to their [41-1] motion for Preliminary Injunction by Jocelyn Schaffer, Martin Schaffer, Brian Schaffer and Exhibit 1 (c/s) (rank, Deputy Clerk) (Entered: 05/21/2001)

06/13/2001 50 RESPONSE by Jerry Weast, Board of Education in opposition to [45-1] motion for Summary Judgment by Martin P. Schaffer, Jocelyn S. Schaffer, Brian Schaffer (rank, Deputy Clerk) (Entered: 06/14/2001)

06/13/2001 50 CROSS-MOTION by Jerry Weast, Board of Education for Summary Judgment (c/s) (rank, Deputy Clerk) (Entered: 06/14/2001)

06/13/2001 51 MEMORANDUM by Jerry Weast, Board of Education in support of [50-1] opposition response by Board of Education, Jerry Weast [50-1] motion for Summary Judgment by Board of Education, Jerry Weast and Exhibits 1 thru 3 (c/s) (FILED SEPARATELY) (rank, Deputy Clerk) (Entered: 06/14/2001)

* * *

07/06/2001 55 REPLY by Brian Schaffer, Jocelyn S. Schaffer, Martin P. Schaffer to response in opposition to their [45-1] motion for Summary Judgment (rank, Deputy Clerk) (Entered: 07/09/2001)

07/06/2001 55 RESPONSE by Brian Schaffer, Jocelyn S. Schaffer, Martin P. Schaffer in opposition to [50-1] motion for Summary Judgment by Board of Education, Jerry Weast (c/s) (rank, Deputy Clerk) (Entered: 07/09/2001)

* * *

08/06/2001 57 REPLY by Jerry Weast, Board of Education to response by defendants in opposition to their [50-1] motion for Summary Judgment by Board of Education, Jerry Weast (c/s) (rank, Deputy Clerk) (Entered: 08/07/2001)

* * *

08/27/2001 Motion hearing held before Messitte, J. re: [41-1] motion for Preliminary Injunction, [45-1] motion for Summary Judgment, [50-1] motion for Summary Judgment – "ARGUED" – Taken under Advisement (Court Reporter: Williams) (lad, Deputy Clerk) (Entered: 08/28/2001)

* * *

11/25/2002 61 OPINION (signed by Judge Peter J. Messitte 11/21/02) (c/i 11/25/02) (mib, Deputy Clerk) (Entered: 11/25/2002)

11/25/2002 62 ORDER "GRANTING" [45-1] motion for Summary Judgment, "AFFIRMING" decision of Administrative Law

Judge insofar as he found MCPS did not provide Brian Schaffer with a FAPE for the school year 1998-99; "REVERSING" decision insofar as awarding Brian's parents reimbursement for only one-half of the tuition costs for that year; "DIRECTING" MCPS to Reimburse the Schaffers for Brian's full tuition for said school year; "DENYING" [50-1] motion for Summary Judgment, "DENYING" [41-1] motion for Preliminary Injunction, and stating all other pending motions are "MOOT"; "ENTERING" Final Judgment in favor of Defendants and Counsel for the parents may submit appropriate Petition for Fees (signed by Judge Peter J. Messitte 11/21/02) (c/i & microfilmed 11/25/02) (mib, Deputy Clerk) (Entered: 11/25/2002)

* * *

12/18/2002 63 NOTICE OF APPEAL by Jerry Weast, Board of Education. Fee Status: $105.00 filing fee paid Appeal record due on 1/17/03 (mlb, Deputy Clerk) (Entered: 12/30/2002)

* * *

08/02/2004 66 JUDGMENT of USCA (certified copy) "REVERSING" the judgment of the USDC and "REMANDING" case to the USDC for further proceedings consistent with the Court's opinion; as to [63] Notice of Appeal filed by Board of Education of Montgomery County, Jerry Weast (mlb, Deputy Clerk) (Entered: 08/02/2004)

08/10/2004 67 ORDER REOPENING CASE. Signed by Judge Peter J. Messitte on 08/09/2004. (c/m 8/10/04) (elt, Deputy Clerk) (Entered: 08/10/2004)

09/03/2004 MANDATE of USCA (certified copy) Opinion and Certified Copy of Judgment, re [63] Notice of Appeal – Final Judgment (krc, Deputy Clerk) (Entered: 09/08/2004)

* * *

10/29/2004 70 ORDER "STAY" action pending Supreme Court's action on Plaintiffs' Petition for Certiorari re 69 Status Report filed by Martin P. Schaffer, Brian Schaffer, Jocelyn Schaffer, Martin Schaffer, Jocelyn S. Schaffer, and directing Clerk to ADMINISTRATIVELY CLOSE this case. Signed by Judge Peter J. Messitte on 10/29/2004. (c/m 11/1/04) (elt, Deputy Clerk) (Entered: 11/01/2004)

General Docket
US Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 03-1030 Filed: 1/7/03
Nsuit: 3440 Civil Rights: Other
Schaffer, et al v. Weast, et al
Appeal from: District of Maryland at Greenbelt

1/7/03	Civil case docketed. [ldj]
	* * *
4/16/03	Brief and joint appendix filed by Appellant Board of Education, Appellant Jerry Weast.
	* * *
4/30/03	Amicus curiae brief filed by Amicus Supporting Appellant Natl School Boards, Amicus Supporting Appellant MD Assn of Boards, Amicus Supporting Appellant NC School Boards, Amicus Supporting Appellant SC School Bd Assoc, Amicus Supporting Appellant VA School Bds Assn
	* * *
5/1/03	ORDER FILED [3780546] granting motion to file addendum to brief
5/19/03	Brief filed by Appellee Martin Schaffer, Appellee Jocelyn Schaffer, Appellee Brian Schaffer.
	* * *
6/4/03	Reply brief filed by Appellant Board of Education, Appellant Jerry Weast.
	* * *
1/23/04	Oral argument heard. panel: Honorable J. H. Wilkinson, Honorable J. M. Luttig, Honorable M. B. Michael, Courtroom Deputy: JLC, Jr.

7/29/04	Published authored opinion filed. Copies to all parties.
7/29/04	Judgment order filed. Decision: reversed and remanded. Dissenting opinion filed. EOD Date: 7/29/04.
	* * *
8/12/04	Petition filed by Appellee Martin Schaffer, Appellee Jocelyn Schaffer, Appellee Brian Schaffer for rehearing.
	* * *
8/24/04	COURT ORDER filed [4039182] denying motion for rehearing [4033469-1] EOD Date: 8/24/04, denying motion for rehearing en banc
	* * *
9/1/04	Mandate issued.
2/28/05	Supreme Court order received granting petition certiorari
	* * *

BRIAN SCHAFFER, A MINOR, BY HIS PARENTS, JOCELYN AND MARTIN SCHAFFER, AND AS HIS NEXT FRIEND	*	BEFORE STEPHEN J. NICHOLS ADMINISTRATIVE LAW JUDGE OF THE MARYLAND OFFICE OF ADMINISTRATIVE HEARINGS #98-MSDE-MONT-OT-016662
VS.	*	
MONTGOMERY COUNTY PUBLIC SCHOOLS	*	

* *

REQUEST FOR MEDIATION/DUE PROCESS HEARING

I request

☐ Mediation Only
☒ Hearing Only
☐ Both

STUDENT FOR WHOM MEDIATION/DUE PROCESS HEARING IS REQUESTED:

Name: BRIAN SCHAFFER

Birthdate: 5-13-84

Address: 11840 Beekman Place

Potomac, MD 20854

County of Residence (or Baltimore City) Montgomery County

School of Attendance: Herbert Hoover Middle School

PERSON REQUESTING MEDIATION/DUE PROCESS HEARING:

Name: Mr. and Mrs. Brian Schaffer

Address: (see above)

Phone: **(W)** Contact attorney **(H)** **(FAX)**

Relationship to Student: ☒ **Parent** ☐ **Legal Guardian** ☐ **Public Agency** ☐ **Self** ☐ **Parent Surrogate**

If a local school board is the applicant, please designate a contact person and telephone number).

ATTORNEY/REPRESENTATIVE (if applicable):

Name: Holly L. Parker, Esq.

Address: 1776 Massachusetts Ave. Suite 300

Washington, DC 20036

Phone: (202) 667-7373 **(FAX)** (202) 667-9146

1. **Please indicate three (3) dates when you and your representative (if you have one) are available within the next twenty (20) days for mediation (if requested) and three (3) dates within the next thirty (30) days when you and your representative and witnesses are available for the hearing (if requested).**

	Mediation		**Hearing**
a.		**a.**	June 16, 1998
b.		**b.**	
c.		**c.**	

2. **Special Accommodation Requests for the Mediation/ Due Process Hearing (please be specific):**

☐ **Interpreter**

- ☐ **Foreign Language** _____
- ☐ **Sign Language** _____
- ☐ **Other** _____

☐ **Special Communication** _____

☐ **Special Accommodations for Disability** _____

☐ **Other** _____

*** * * IMPORTANT INFORMATION * * ***

In accordance with the Individuals with Disabilities Education Act (IDEA), please provide a description of the problem and issues to be reviewed at the hearing, including relevant facts, and a proposed solution to the problem.

ISSUES:

Brian Schaffer

Brian is a student in Montgomery County, Maryland. At issue is whether the placement recommended by MCPS for the 1998-1999 school year at Hoover Middle School is appropriate, and if not, whether the placement at the McLean School is appropriate. Parents have duly notified MCPS of their intention to enroll Brian at the McLean School and have informed them of their disagreement with the proposed program. The placement at Hoover is too large, not structured enough, has insufficient services and does not include required related services. Additionally, we are in disagreement with the Intensity of service proposed and do not believe it complies with COMAR requirements. The IEP is also at issue as we do not believe

MCPS has identified Brian's complete disability and have not signed the IEP. This statement is intended to comply with any federal or state regulations, and is not intended as a exhaustive list of issues in this case. If further clarification is necessary we would be agreeable to participating in a telehearing with the assigned ALJ.

/s/ Holly L. Parker/ELD. 5-26-98

Signature of Applicant **Date**

MAIL OR DELIVER APPLICATION TO:
(Public Agency Complete with Name and Address)

Mrs. Elinor Rouff
Division of Equity Assurance and Compliance
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JERRY D. WEAST, *et al.*, Plaintiffs, v. BRIAN SCHAFFER, *et al.*, Defendants.	Civil Action No. PJM-99-15

DECLARATION OF JOCELYN SCHAFFER

Jocelyn Schaffer declares and says as follows:

1. I am the mother of Brian Schaffer. I make this declaration at the request of and for use by the attorneys representing my family in special education matters for Brian. The matters discussed herein are from my personal knowledge.

2. Brian has learning disabilities and attentional issues which require that he receive specialized, structured, individualized, and flexible support in order for him to receive benefit from his educational program.

3. During the fall semester of the 1997-98 school year, my husband and I requested that MCPS initiate the process of determining Brian's eligibility for special education and proposing a program for him. At that time, we began to explore alternative placements for him, both public and private.

4. For the 1998-99 school year, MCPS proposed to place Brian in a program at Hoover Middle School, his home school, where the class sizes were much larger, and the special education services significantly less intensive,

than we felt would be appropriate for him. Educators at Green Acres School, where Brian attended from Pre-Kindergarten through 7th grade, and the educational psychologist and speech pathologist/audiologist who performed thorough evaluations of Brian's needs, agreed with our assessment that the MCPS proposal was not appropriate for Brian.

5. Based on the recommendations of Brian's private evaluators, and my visits to various schools, my husband and I believed that McLean School would be a proper placement for him.

6. The McLean School is a nonpublic school that offers both regular education and an intensive special program for students with disabilities, as well as a combination of these programs according to the needs of individual students.

7. Since MCPS had not offered Brian an appropriate placement by the summer preceding the 1998-99 school year, my husband and I enrolled him at McLean School and have since been funding him in that placement.

8. Brian has been and continues to be successful in, and benefits from, his educational placement at McLean.

9. On August 15, 2000, MCPS convened an IEP team to discuss Brian's educational needs and to propose a program and placement for the 2000-01 school year.

10. Following the August 15, 2000, IEP meeting, MCPS offered Brian a placement in the Learning Center at Walter Johnson High School. Exhibit 1.

11. The Learning Center at Walter Johnson High School is a program within a general education high school in which students with learning disabilities can receive specialized instruction. The program has small classes taught by special educators. This program is consistent with the type of program that we believe our son requires to be successful.

12. The school system did not propose the Learning Center for Brian until August 15, 2000 – or indeed, make *any* prior mention of that program as a possibility for him. This proposal did not come until after our contract with McLean School for the 2000-2001 school year had become binding, and we were contractually obligated to pay the annual tuition in full. Additionally, there was no way to realistically accept the proposal for a program we had never seen, and about which we had no information, nor time to prepare to transition Brian into a school considerably larger than those he had been attending for his entire school career. We therefore were unable to accept the proposed program at Walter Johnson for the 2000-01 school year, but agreed to explore it as a viable option for the following school year. Exhibit 2.

13. Throughout this school year, I have been in contact several times with Janan Slough, the Director of the Learning Center. Brian and I visited the program on February 16, 2001, and on June 15, 2001, I have an appointment to return to enroll Brian there. Exhibit 3. My husband and I do not now intend for Brian to return to McLean School for the 2001-02 school year.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on 4-16/01 /s/ Jocelyn Schaffer
Jocelyn Schaffer

PLAINTIFF'S EXHIBIT 1

[LOGO]
850 Hungerford Drive * Rockville Maryland * 20850-1747
Telephone (301) 279-3181

August 17, 2000

Mr. and Mrs. Martin Schaffer
11840 Beckman Place
Potomac, Maryland 20854

RE: Brian Schaffer (5/13/84)

Dear Mr. and Mrs. Schaffer:

On August 15, 2000, the Individualized Education Program (IEP) team at the central level met to consider the IEP and placement for Brian for the 2000-2001 school year.

The team recommended a resource/classroom combination through the secondary learning center at Walter Johnson High School as the appropriate program in the least restrictive environment for Brian. This action was taken primarily for the following reasons:

> The documentation describes Brian as a 16-year-3 month-old student with a specific learning disability.

Brian's assessed needs for special education require, as stated on the enclosed IEP, 18.75 hours per week of specialized instruction and .75 hours per week of counseling, which can be met through the implementation of an appropriate IEP in the recommended program.

Another considered option was a general education classroom; however, Brian's special education and related service needs exceed the services available in a general education classroom.

Please be aware that all available records (including each procedure, test, record or report) were considered as a basis for the recommendations of the placement or action. However, among the most significant records were: Psychological Report (3/00); Educational Assessment (2/00); Speech/Language Report from Kamara Center (6/99); Ms. Brahm's review of the Kamara Speech/Language Report (5/00); Teacher Reports (3/00); and information presented at the meeting. A copy of the IEP is enclosed for your records.

Please contact Ms. Janan Slough, coordinator, by calling 301-571-6921, to make an appointment to participate in a meeting to discuss the implementation of Brian's IEP with school staff who may work with him. If this office can be of further assistance, please notify Ms. Lauree Hemke, placement specialist, at 301-279-3181.

If you feel that this recommendation is inappropriate, you may request either mediation or appeal this decision. You have received a copy of the *Procedural Safeguards Brochure,* which explains your rights and steps in this process. If you need assistance in interpreting this information, please contact Mrs. Hemke.

We wish Brian a successful school experience.

Sincerely,

/s/ George R. Moore
George R. Moore
Team Leader, Placement Unit

GRM:arb

Enclosures

Copy to:
Dr. Benz
Mr. Eig w/enclosure
Mr. Greismann w/enclosure
Mrs. Hemke
Mr. Leighty
Ms. Russell
Ms. Slough
Mr. Stetson

PLAINTIFF'S
EXHIBIT 2

Jocelyn & Martin Schaffer
11840 Beckman Place
Potomac, MD 20854

August 29, 2000

Mr. George R. Moore
Team Leader, Placement Unit
Montgomery County Public Schools
850 Hungerford Drive
Rockville, MD 20850-1747

Dear Mr. Moore:

Thank you for your letter of August 17, formally notifying us of the ARD team's placement recommendation for our son, Brian. We appreciate your consideration of the many records and other information presented at the ARD meeting on August 15 and are happy that you agree that Brian needs small classes taught by special educators.

The conclusion that the ARD team reached at its last meeting is consistent with what we have sought for Brian since we began the coding process in 1997. It was clear to us, to Brian's teachers, to the educational psychologist who evaluated him, and to the speech pathologist/audiologist who evaluated him, that he needs small classes taught by special educators.

The first ARD team to propose a placement for Brian in 1998 recommended that he attend Hoover Middle School for 8th grade. We rejected that proposal because we and the experts who had thoroughly evaluated him were certain that he could not succeed in the large classes at that school. As the County recommended no appropriate placement, we enrolled him at the McLean School of Maryland where he has been in small classes taught by special educators for 8th and 9th grades. McLean also has provided a nurturing environment – important to a child like Brian who has fragile self esteem – and has provided him the opportunity to have remedial tutoring at school. In addition, Brian has had individual speech and language therapy on a weekly basis and he completed a round of Fast Forward training last summer.

From our first ARD meetings in 1998 when we specifically asked what programs would be available for high school, no one ever disclosed that the County has a program at

Walter Johnson with small classes taught by special educators for bright, learning disabled students. At subsequent ARD meetings a representative from Winston Churchill High School attended, as you know, but there was no representative from any other County program. We had no knowledge of the program you now recommend at Walter Johnson until our most recent meeting on August 15.

As you suggested, I have spoken to Janan Slough, coordinator of the program at Walter Johnson. She suggests that we visit during the third week of school, when her students will have had two weeks to settle into the program. We are eager to visit the program and to have Brian visit so that we can make an informed judgment about its appropriateness for him. If we do feel that the program is academically appropriate for him and that he would be able to adjust psychologically to the social aspects of a large school (something he has never experienced), he will need some time and preparation to make that transition. Unfortunately, because the County did not suggest the placement until August 15 and we did not know of the program's existence before then, there was no opportunity for us to visit the program in time to have him begin in it for this school year. Furthermore, our first tuition payment for Brian's 10th grade year at McLean was due August 1. As you know, the ARD meeting held on August 15 was postponed twice because key members of the County's team were not present when the meetings were convened. By that time our contract with McLean for the 2000-2001 academic year had become binding and we now are responsible for the full year's tuition. Therefore, while we ultimately may agree that the recommended placement at Walter Johnson is appropriate for Brian, the County

made the recommendation too late for us to be able to accept it for the school year that is about to begin.

As an independent school accredited by the Association of Independent Maryland Schools, McLean has never needed or sought accreditation by the County as a special education school. Although you acknowledge that Brian's classes at McLean are taught by special educators, you informed us that the County does not officially recognize McLean's program as a "special education" program. We chose McLean because we felt that it would meet Brian's needs. (Brian's classes there are very small and all of his academic subjects are taught by special educators.) We also felt that McLean met the requirement of "least restrictive environment" because the school has classes for students who are traditional learners in addition to those for students with special needs. *We had to find a placement for our son for 8th grade because the County did not recommend a placement that was appropriate. He soon will begin his third year there because the County provided no acceptable alternative.*

Now that the County agrees that Brian needs small classes taught by special educators, we hope that you can look beyond the certification labels that do not apply to independent schools, and will fund his attendance at McLean – a placement which has small classes taught by special educators, and which we chose because we were not aware that there might be an appropriate alternative in the County system. We ask for tuition, attorneys' fees, and related expenses for 8th, 9th and 10th grades because it appeared to us that this was the only appropriate placement within a reasonable distance of our home. Because McLean has the elements that the County now finds essential to Brian's education and because the

County withheld information about a possibly appropriate program within its own school system until now, we believe that funding should be approved.

Sincerely yours,

/s/ Jocelyn S. Schafer Martin P. Schaffer
Jocelyn and Martin Schaffer

Copy to:
Dr. Benz
✓ Mr. Eig
Mr. Greisman
Mrs. Hemke
Mr. Leighty
Mr. Russell
Ms. Slough
Mr. Stetson

PLAINTIFF'S
EXHIBIT 3

Jocelyn and Martin Schafer
11840 Beekman Pl.
Potomac, MD 20854-1991

March 31, 2001

Ms. Janan Slough, Director
Secondary Learning Center Program
Walter Johnson High School
6400 Rock Spring Drive
Bethesda, MD 20814-1991

Dear Ms. Slough,

Thank you for taking the time to meet with me and with my son, Brian, on February 16th. We appreciated the opportunity to speak with you and to visit classes, and are

impressed with your program and the warm welcome we received.

As you know from our subsequent telephone conversations, we intend to enroll Brian in the Walter Johnson Learning Center program in accordance with the ARD team's decision of August 15, 2000, beginning in the coming school year, 2001-2002. I called the MCPS central offices as you suggested, and was told that the enrollment process requires a meeting with you. I look forward to meeting you again on June 15, as we agreed, to enroll Brian in Walter Johnson and to discuss his transition. I will bring a copy of his McLean transcript to that meeting. In the meantime, if there are any procedures with which I should comply, or other documentation that I should bring, to enroll him or to arrange his transportation to school, please feel free to call me at 301-251-0668 or 301-468-8115.

Again, thank you for your time. I look forward to working with you over the next two years.

Sincerely yours,

/s/ Jocelyn Schaffer
Jocelyn Schaffer

cc:
Mr. George Moore,
Special Needs Placement Office
MCPS Central Office

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JERRY D. WEAST, *et al.*, Plaintiffs, v. BRIAN SCHAFFER, *et al.*, Defendants.	Civil Action No. PJM-99-15

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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[7] In an IEP meeting held on August 15, 2000, MCPS offered Brian a placement for the 2001-02 school year at the Walter Johnson Learning Center, in precisely the type of program for which his parents have been advocating for years. Brian's parents have accepted this public school placement, and plan to enroll him on June 15, 2001. This action exemplifies not only the good faith with which the Schaffers have always dealt with MCPS, but also the school system's admission that Brian requires a more intensive program than MCPS previously proposed for him. MCPS thus is paradoxically arguing here that Brian does not need the type of program that it now recommends and that the parents have accepted.